

REMARKS/ARGUMENTS

The Applicants originally submitted Claims 1-27 in the application. The Applicants have amended Claims 1-2, 10-11, 19-20 and 25. No claims have been canceled or added. Accordingly, Claims 1-27 are currently pending in the application.

I. Rejection of Claims 1-3, 6-7, 9-12, 15-16 and 18 under 35 U.S.C. §102

The Examiner has rejected Claims 1-3, 6-7, 9-12, 15-16 and 18 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,456,856 to Werling, *et al.* The Applicants respectfully disagree.

Werling is directed to minimizing radio wave exposure to users of radio communication apparatuses. (*See* column 1, line 65 to column 2, line 12.) Werling does not teach, however, a portable cell phone that determines a location of the portable cell phone with respect to a portion of a body of a user as recited in independent Claims 1 and 10. On the contrary, Werling simply determines if a radio communication apparatus is proximate to human tissue. (*See* column 3, lines 1-8.) The Applicants do not find where Werling determines location of the radio communication apparatus with respect to a portion of a user's body. Werling, therefore, does not teach each element of independent Claims 1 and 10.

Since Werling does not disclose each and every element of independent Claims 1 and 10, Werling does not anticipate Claims 1 and 10 and Claims dependent thereon. Accordingly, the Applicants respectfully request the Examiner to withdraw the §102 rejection with respect to Claims 1-3, 6-7, 9-12, 15-16 and 18 and allow issuance thereof.

II. Rejection of Claims 4-5, 8, 13-14 and 17 under 35 U.S.C. §103

The Examiner has rejected Claims 4-5, 8, 13-14 and 17 under 35 U.S.C. §103(a) as being unpatentable over Werling in view of the following U.S. Patents: U.S. Patent No. 6, 195,562 to Pirhonen for Claims 4 and 13; U.S. Patent No. 6,408,187 to Merriam for Claims 5 and 14; and Merriam in further view of U.S. Patent No. 4,636,741 to Mitzlaff for Claims 8 and 17. The Applicants respectfully disagree.

As discussed above, Werling does not teach a portable cell phone that determines a location of the portable cell phone with respect to a portion of a body of a user as recited in independent Claims 1 and 10. Additionally, Werling does not suggest a portable cell phone that determines a location of the portable cell phone with respect to a portion of a body of a user since Werling simply addresses determining proximity of a radio communications device to human tissue. (*See* column 3, lines 1-8.)

Each of the references, Pirhonen, Merriam and Mitzlaff, have been cited to disclose the subject matter of a dependent Claim. The Applicants do not find, however, where any of the references Pirhonen, Merriam and Mitzlaff teach or suggest a portable cell phone that determines a location of the portable cell phone with respect to a portion of a body of a user. The cited references, therefore, do not teach each element of independent Claims 1 and 10 and Claims dependent thereon. Accordingly, the cited references do not provide a *prima facie* case of obviousness for Claims 4-5, 8, 13-14 and 17 which depend on Claims 1 or 10, respectively. Thus, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 4-5, 8, 13-14 and 17 and allow issuance thereof.

III. Rejection of Claims 19-21, 24-25 and 27 under 35 U.S.C. §103

The Examiner has rejected Claims 19-21, 24-25 and 27 under 35 U.S.C. §103(a) as being unpatentable over Werling in view of U.S. Patent No. 6, 498,924 to Vogel, *et al.* 195,562. The Applicants respectfully disagree.

As recognized by the Examiner, Werling does not teach or suggest a portable cell phone including a power circuit that provides a network adjusted transmit power level as a function of a position to a communications tower as recited in independent Claim 19. Thus, the Examiner cites Vogel to cure this deficiency of Werling. (*See Examiner's Action, page 7.*)

Vogel provides mobile radio communications systems and an apparatus for measuring the distance or the propagation time between a mobile station and a base station in such a system. (*See column 2, lines 15-32.*) Vogel provides no teaching or suggestion, however, of a power circuit that provides a network adjusted transmit power level as a function of a position to a communications tower. Instead, Vogel is directed to improving the accuracy of determining the distance and propagation. (*See column 2, lines 1-14.*) Vogel does teach in the background that the distance and propagation measurements may be used for various purposes. Vogel provides no teaching or suggestion, however, that the purpose may be for providing a power level for transmitting.

Accordingly, neither Werling nor Vogel, individually or in combination, teach or suggest a power circuit that provides a network adjusted transmit power level as a function of a position to a communications tower. Thus, neither Werling or Vogel, individually or in combination, teach or suggest a power governing subsystem that determines a transmit power level for a portable cell phone based on a network adjusted transmit power level and a proximity transmit power level as recited in Claim 19. The cited combination of Werling and Vogel, therefore, does not provide a

prima facie case of obviousness of independent Claim 19 and Claims dependent thereon. Thus, the cited combination of Werling and Vogel does not render unpatentable Claims 19-21, 24-25 and 27. Accordingly, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 19-21, 24-25 and 27 and allow issuance thereof.

IV. Rejection of Claims 22, 23 and 26 under 35 U.S.C. §103

The Examiner has rejected Claims 22, 23 and 26 under 35 U.S.C. §103(a) as being unpatentable over Werling in view of Vogel and the following U.S. Patents to Pirhonen for Claim 22, to Merriam for Claim 23 and Merriam in further view of Mitzlaff for Claim 26. The Applicants respectfully disagree.

As discussed above, the combination of Werling and Vogel does not teach or suggest each element of independent Claim 19. Each of the references, Pirhonen, Merriam and Mitzlaff, have not been cited to cure the above deficiency of Werling and Vogel but to disclose the subject matter of a dependent claim. The Applicants do not find, however, where any of the references Pirhonen, Merriam and Mitzlaff teach or suggest a portable cell phone including a power circuit that provides a network adjusted transmit power level as a function of a position to a communications tower and a proximity regulation system including a power governing subsystem that determines a transmit power level for the portable cell phone based on the network adjusted transmit power level and a proximity transmit power level. The cited references, therefore, do not teach each element of independent Claim 19 and Claims dependent thereon. Accordingly, the cited references do not provide a *prima facie* case of obviousness for Claims 22, 23 and 26 which depend on Claim 19.

Thus, the Applicants respectfully request the Examiner withdraw the §103(a) rejection of Claims 22, 23 and 26 and allow issuance thereof.

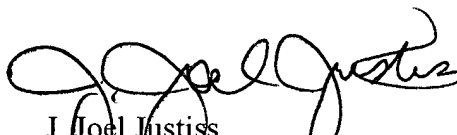
V. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 1-27.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application.

Respectfully submitted,

HITT GAINES, P.C.


J. Joel Justiss
Registration No. 48,981

Dated: 11/15/04

P.O. Box 832570
Richardson, Texas 75083
(972) 480-8800